

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 28 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0069-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
EDWARD JOHN SANDERS,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20002900

Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Edward J. Sanders

Florence
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Following a jury trial, petitioner Edward Sanders was convicted of first-degree murder, sexual assault, second-degree burglary, kidnapping, and sexual abuse. The trial court sentenced him to consecutive prison terms of natural life and life imprisonment and to concurrent terms of 3.5 years, 5 years, and 1.5 years, respectively.

We affirmed his convictions and sentences on appeal. *State v. Sanders*, No. 2 CA-CR 2005-0284 (memorandum decision filed Dec. 26, 2006). After Sanders’s attorney filed a notice in lieu of petition, citing *Montgomery v. Sheldon*, 181 Ariz. 256, 260, 889 P.2d 614, 618 (1995), stating he was “unable to find any colorable claims pursuant to Rule 32,” Sanders filed a supplemental, pro se petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. Sanders now challenges the court’s denial of that petition. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here.

¶2 In his petition for review, Sanders reasserts several of the arguments he raised below: he is entitled to “take a lie detector test” to prove his innocence; the deoxyribonucleic acid evidence is faulty; he was falsely accused of using a belt buckle to commit the charged offenses; a crime similar to the one he was convicted of was committed while Sanders was in custody; he was denied the right to a speedy trial; a juror “harassed” him; and, in what appears to be a claim of ineffective assistance of counsel, Sanders asserts his trial attorney conducted himself inappropriately.

¶3 To the extent Sanders’s petition for post-conviction relief presented claims he either raised or could have raised on appeal, they are precluded. *See* Ariz. R. Crim. P. 32.2(a) (precluding claims based on any ground finally adjudicated on merits on appeal, or waived at trial or on appeal). And, nothing in the petition for review establishes that Rule 32.2(a) is inapplicable to Sanders’s petition filed below or that he should be excused from that rule’s preclusive effect. In addition, in order to state a colorable claim of

ineffective assistance of counsel, a defendant must establish that counsel's performance fell below an objectively reasonable professional standard and that the deficient performance was prejudicial to the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985).

¶4 Based on the record before us, we cannot say the trial court abused its discretion in denying Sanders's petition for post-conviction relief. The court denied relief in a seven-page, detailed and thorough minute entry order that clearly identified each of Sanders's arguments and correctly ruled on them in a manner that will allow any future court to understand their resolution. We therefore approve and adopt the court's ruling and see no need to reiterate it here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶5 We grant the petition for review but deny relief.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge